from a consideration of the object and purpose of the whole contract. See *Diamond Match Co.* v. *Roeber* (1887) 106 N. Y. 473, 486, 13 N. E. 419; *cf. Dills* v. *Doebler* (1892) 62 Conn. 366, 26 Atl. 398. If the interpretation is doubtful it will be considered a penalty. See *Ayres* v. *Houston* (1920) 193 App. Div. 145, 148, 183 N. Y. Supp. 808. The purpose of marketing associations is to exclude competition and legal damages for interference would be speculative. But an objection that is usually urged against decreeing specific performance in this type of contract is that exacting and continuous supervision is necessary to enforce the decree. *Blue Point Oyster Co.* v. *Haagenson* (D. C. 1913) 209 Fed. 278. As against the farmer, marketing contracts would not be difficult of enforcement, but as to the association, a different situation obtains. Specific performance will not be decreed unless there is mutuality of remedy and this would not exist unless the court was prepared to compel the association to perform had the parties been reversed. See *Marble Co.* v. *Ripley* (U. S. 1870) 10 Wall 339, 359. However, the recent tendency of courts of equity is to go rather far in compelling performance. *Jones* v. *Parker* (1895) 163 Mass. 564, 40 N. E. 1044; *Village of Larchmont* v. *Larchmont Park, Inc.* (1918) 185 App. Div. 330, 173 N. Y. Supp. 32. When courts of equity were first struggling for recognition they refused to decree specific performance where many issues were raised, because of fear that they could not enforce the decree. See Pound, *The Progress of the Law* (1919) 33 Harvard Law Rev. 420, 434. But with the dignity of the court well established and with its power to assess costs and punish contempt, the real reason for not compelling performance has disappeared.

INJUNCTION—THREATENED SALE—TAX OR PENALTY.—Pending a prosecution of the plaintiff for an illegal sale of liquor, the defendant, an internal revenue collector, assessed the plaintiff with a certain tax on such sale, and, in addition, a penalty authorized by the National Prohibition Act, Tit. 2, § 35, without giving the plaintiff a hearing. Upon the plaintiff's refusal to pay, the defendant threatened seizure and sale of his property. On appeal from a suit to enjoin these proceedings, *held,* Mr. Justice Brandeis and Mr. Justice Pitney dissenting, injunction granted. *Lipke* v. *Lederer* (1922) 42 Sup. Ct. 549.

It is essential to due process of law that before a tax or penalty may be assessed the tax payer must be given a fair opportunity for a hearing. *Central of Georgia Ry.* v. *Wright* (1907) 207 U. S. 127, 28 Sup. Ct. 47. The question whether the imposition is a tax or a penalty depends upon the intendment of the statute. *Bailey* v. *Drexel Furniture Co.* (1922) 42 Sup. Ct. 449; see *Dayton Brass Castings Co.* v. *Gilligan* (D. C. 1920) 267 Fed. 872, 874. If it is intended to suppress crime, the imposition is regarded as a penalty. *Helwig* v. *U. S.* (1903) 188 U. S. 605, 23 Sup. Ct. 427. Where it is in the nature of a tax, the tendency has been to refrain from enjoining its collection, in order to facilitate governmental transactions. *Nye, Jenks & Co.* v. *Town of Washburn* (C. C. 1903) 125 Fed. 817; see (1910) 10 COLUMBIA LAW REV. 564, and cases cited. Injunctions against collection of taxes are now prohibited by statute. (1867) 14 Stat. 475, U. S. Comp. Stat. (1916) § 5947. But the language of the statute is limited to taxes, and does not apply to penalties. Equity will grant an injunction only where the injury threatened will be irreparable or where there is no adequate remedy at law. *State* v. *Wood* (1900) 155 Mo. 425, 56 S. W. 474. There is an adequate remedy at law against the revenue collector for money wrongfully collected; *Abrast Realty Co.* v. *Maxwell* (D. C. 1913) 206 Fed. 333 (*semble*); hence there is no relief in equity. *Nye, Jenks & Co.* v. *Town of Washburn, supra.* Thus, in the instant case, an injunction to restrain the collection of the tax is clearly forbidden by statute, and as to the penalty there is an adequate remedy at law. The decision, therefore, despite the un-

constitutional nature of the assessment proceedings, seems to exceed the ordinary limits of equity jurisdiction and the bill should not have been sustained.

INSURANCE — LOCATION OF RISK — SUBROGATION — ASSIGNMENT. — The complaint alleged that the plaintiff was the insurer of certain goods "while contained" in a designated warehouse, that the defendant railroad company negligently set fire to the goods while on a platform adjacent to its tracks, and that the plaintiff paid the loss taking a formal assignment of the owner's cause of action against the railroad. The court below sustained the defendant's demurrer. *Held,* the plaintiff's application for a writ of *certiorari* in the intermediate court was properly denied. *Hartford Insurance Co.* v. *Payne* (Ga. 1922) 112 S. E. 736.

A right of subrogation exists on the payment of a loss by the insurer to the insured. *Allen-Wright Furniture Co.* v. *Hines* (1921) 34 Idaho 90, 200 Pac. 889. The right exists if the payment was made by the insurance company on a reasonable belief, or to avoid a doubtful controversy, though actually it was not liable. *Railway Co.* v. *Fire Ass'n* (1895) 60 Ark. 325, 30 S. W. 350; *Maryland Casualty Co.* v. *Cherryvale Gas Co.* (1917) 99 Kan. 563, 162 Pac. 313; *Sun Mut. Ins. Co.* v. *Mississippi Transportation Co.* (C. C. 1883) 17 Fed. 919; see *King* v. *Victoria Ins. Co.* [1896] A. C. 250, 255. Where a policy insures goods while contained in a designated building it does not generally cover losses occurring while the goods are elsewhere. *Green* v. *Liverpool, etc. Fire Ins. Co.* (1894) 91 Iowa 615, 60 N. W. 189; *Liebenstein* v. *Aetna Ins. Co.* (1867) 45 Ill. 303. In the instant case, however, the facts might have been such that the insured in an action against the insurer could reasonably have urged that "in the warehouse" included the platform. *Cf. Webb* v. *National Ins. Co.* (N. Y. 1849) 2 Sandf. 497. In a few states there are statutes to the effect that where railroad companies are liable for damages caused by sparks from their engines, they are entitled to the benefit of any insurance on the destroyed property. In such states, of course, the insurers cannot be subrogated to the insured's rights. *Farren* v. *Maine Central R. R.* (1914) 112 Me. 81, 90 Atl. 497. No such statute having appeared in the instant case, it would seem that the insurance company should have recovered by right of subrogation. Moreover, the plaintiff was the assignee of the insured's cause of action. A tort action for damage to property is assignable in almost all jurisdictions. *Metropolitan Ins. Co.* v. *Day* (1920) 119 Me. 380, 111 Atl. 429; *Stapp* v. *Madera Canal Co.* (1917) 34 Cal. App. 41, 166 Pac. 823; see *Sayre* v. *Detroit R. R.* (1919) 205 Mich. 294, 314, 171 N. W. 502; *contra, Turk* v. *Illinois Cent. R. R.* (D. C. 1912) 193 Fed. 252. The plaintiff in the instant case had a good cause of action, both by assignment and by subrogation.

JUDGMENTS—LIENS—ASSIGNMENTS.—Edwards held a judgment against the defendant corporation which was a lien upon its land. The corporation was indebted to the defendant Myers. By agreement of the parties the corporation paid Edwards the amount of his judgment and Edwards assigned the judgment to Myers as security for his debt. Myers later advanced money to the corporation in further reliance upon the judgment assigned to him. Subsequently the corporation conveyed the land to the plaintiff, who had constructive notice of the Edwards' judgment but not of its assignment, for a cash consideration. The plaintiff brought this action to cancel the judgment lien. *Held,* bill dismissed *Lachner* v. *Myers* (Wash. 1922) 208 Pac. 1095.

Equity will not permit a judgment debtor, by paying the amount of the judgment and taking an assignment of it to himself or to a third person, to get contribution from his joint tortfeasor; *Lillie* v. *Dennert* (C. C. A. 1916) 232 Fed. 104; nor from his co-debtor from whom he is not entitled to contribution;